

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

BEVERLY DUNCAN,

Plaintiff,

v.

No. CIV-13-1066 LAM

CAROLYN W. COLVIN, Acting Commissioner
of the Social Security Administration,

Defendant.

ORDER GRANTING PLAINTIFF'S MOTION FOR ATTORNEY FEES
UNDER THE EQUAL ACCESS TO JUSTICE ACT


THIS MATTER is before the Court on Plaintiff's *Motion for Award of Attorney's Fees Pursuant to the Equal Access to Justice Act, 28 U.S.C. §[2412(d)]* (Doc. 24) in the amount of \$8,460.80 for attorney fees, filed on November 14, 2014. No response to the motion has been filed and the time for doing so has passed, which constitutes consent to grant the motion. *See* D.N.M. LR-Civ. 7.1(b) ("The failure of a party to file and serve a response in opposition to a motion within the time prescribed for doing so constitutes consent to grant the motion."). Having considered the motion, the record in this case, and relevant law, the Court **FINDS** that Plaintiff's motion is well-taken and similar to other motions for attorney's fees under this statute which Defendant does not usually oppose. For those reasons, the motion shall be **GRANTED**.

WHEREFORE, IT IS HEREBY ORDERED that Plaintiff's *Motion for Award of Attorney's Fees Pursuant to the Equal Access to Justice Act, 28 U.S.C. §[2412(d)]* (Doc. 24) is **GRANTED**, and Plaintiff is authorized to receive **\$8,460.80** for payment to Plaintiff's attorney for

services before this Court, as permitted by the Equal Access to Justice Act, 28 U.S.C. § 2412, and in accordance with *Manning v. Astrue*, 510 F.3d 1246, 1255 (10th Cir. 2007).

IT IS FURTHER ORDERED that, if Plaintiff's counsel is ultimately granted attorney fees pursuant to 42 U.S.C. § 406(b) of the Social Security Act, Plaintiff's attorney shall refund the smaller award to Plaintiff pursuant to *Astrue v. Ratliff*, 560 U.S. 586, 596 n.4 (2010) (explaining that, if a claimant's counsel is ultimately granted attorney fees under § 406(b) out of the claimant's benefit award, the claimant's attorney must refund to the claimant the amount of the smaller fee).

IT IS SO ORDERED.


LOURDES A. MARTÍNEZ
UNITED STATES MAGISTRATE JUDGE
Presiding by Consent